

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION

BUERGOFOL GmbH, Plaintiff, vs. OMEGA LINER COMPANY, INC., Defendant.	Case No. 4:22-cv-04112 DECLARATION OF MICHAEL NEUSTEL IN SUPPORT OF OMEGA’S MOTION TO STRIKE BUERGOFOL’S OPPOSITION TO OMEGA’S MOTION TO COMPEL (DKT. 195) AND TO SANCTION COUNSEL FOR ABUSIVE LITIGATION CONDUCT
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I, Michael Neustel, hereby declare as follows:

1. I am one of the attorneys of record for Defendant Omega Liner Company, Inc. (“Omega”), have direct knowledge of the facts stated herein, and submit this declaration in support of Omega’s Motion to Strike Buergofol’s Opposition to Omega’s Motion to Compel (Dkt. 195) and to Sanction Counsel for Abusive Litigation Conduct.
2. On January 24, 2023, during a meet-and-confer call regarding Omega’s Interrogatory No. 4 requesting prior art known to Buergofol, Lester Wallace, counsel for Plaintiff Buergofol GmbH (“Buergofol”) referred to the interrogatory as “ridiculous” and Darien Wallace referred to Interrogatory No. 4 as an “amateurish interrogatory.”
3. Attached hereto as **Exhibit A** is a true and correct copy of correspondence dated January 30, 2023, from Darien Wallace, counsel for Buergofol.
4. Attached hereto as **Exhibit B** is a true and correct copy of correspondence dated March 23, 2023, from counsel for Omega to counsel for Buergofol.
5. Attached hereto as **Exhibit C** is a true and accurate transcript of a voicemail from Lester Wallace, counsel for Buergofol, on March 27, 2023, at 2:49 p.m. CT left on my

cell phone. I possess a digital audio file of this voicemail, which is available upon request by the Court.

6. During a meet-and-confer call held on March 31, 2023, at 1:30 pm CT, Lester Wallace referred to me as a “fool.”

7. Attached hereto as **Exhibit D** is a true and correct copy of an email sent on March 31, 2023, at 6:38 p.m. CT, from counsel for Omega to counsel for Buergofol.

8. During a meet-and-confer call held on April 14, 2023, Lester Wallace stated to Omega’s counsel, “You are so uninformed,” and “I am not going to wait for you to get educated.”

9. During a meet-and-confer call held on April 6, 2023, Lester Wallace exhibited antagonism and launched professional attacks against Omega’s counsel including referring to one of Omega’s motions filed the day before as an “embarrassment.” Omega’s counsel repeatedly instructed Lester Wallace to cease his attacks, or they would end the call. Despite these repeated warnings, Lester Wallace continued with his attacks, leading Omega’s counsel to terminate the call.

10. During a meet-and-confer call held on July 6, 2023, at 11:00 a.m. CT, Lester Wallace repeatedly interrupted Omega’s counsel stating the meet-and-confer was a “waste of time.” During the same meet-and-confer, Lester Wallace told me to “stop asking dumb questions.” During the same meet-and-confer, Lester Wallace told me, “It is always a waste of my time talking to you.”

11. During a meet-and-confer call held on August 1, 2023, at 12:00 p.m. CT, Lester Wallace referred to me as “stupid.” During the same meet-and-confer, Darien Wallace referred to my objections as “stupid.”

12. Attached hereto as **Exhibit E** is a true and correct copy of correspondence dated August 1, 2023, from counsel for Omega to counsel for Buergofol, summarizing the meet-and-confer held on August 1, 2023.

13. Attached hereto as **Exhibit F** is a true and correct copy of correspondence dated August 2, 2023, from Darien Wallace, counsel for Buergofol.

14. Attached hereto as **Exhibit G** is a true and correct copy of correspondence dated August 4, 2023, from counsel for Omega to counsel for Buergofol.

15. Attached hereto as **Exhibit H** is a true and correct copy of an email sent on August 7, 2023, at 12:23 p.m. CT, from counsel for Omega to counsel for Buergofol in response to Lester Wallace's email sent on August 6, 2023, at 12:31 a.m. CT.

16. On August 7, 2023, in the same email correspondence in which Lester Wallace accused me of recording our conversations, Lester Wallace contacted me requesting a private discussion ostensibly to discuss the "unfortunate interactions between counsel." Attached hereto as **Exhibit I** is a true and correct copy of the August 7, 2023, email correspondence between Lester Wallace and me.

17. Attached hereto as **Exhibit J** is a true and correct copy of correspondence dated August 9, 2023, from counsel for Omega to counsel for Buergofol.

18. Attached hereto as **Exhibit K** is a true and correct copy of correspondence dated August 13, 2023, from counsel for Omega to counsel for Buergofol.

I hereby declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Dated this 1st day of September, 2023.



Michael S. Neustel